

§ 40.492

and receive a permit as a manufacturer of processed tobacco in accordance with the provisions of this subpart.

(b) *Exceptions.* (1) A person who engages in the processing of tobacco solely for his own personal use or consumption and not for sale or transfer to another person is not engaged in the manufacture of processed tobacco for purposes of this part and, accordingly, is not required to qualify as a manufacturer of processed tobacco.

(2) Any person who holds a TTB permit for the manufacture of tobacco products is thereby authorized to process tobacco solely for use in the manufacture of tobacco products under that permit, so long as the processed tobacco is not removed from the factory for any purpose other than destruction. Such a manufacturer is not required to qualify under this subpart as a manufacturer of processed tobacco.

(3) Any person that holds a TTB permit for the manufacture of tobacco products and that removes processed tobacco from the factory must apply for authorization to engage in that activity, when required to do so under § 40.47.

[T.D. TTB-78, 74 FR 29410, June 22, 2009, as amended by T.D. TTB-104, 77 FR 37304, June 21, 2012]

§ 40.492 Application for permit.

The application for a permit as a manufacturer of processed tobacco must be made on TTB F 5200.3, according to the instructions on the form. All documents required under this subpart to be furnished with the application must be included with the application.

§ 40.493 Transitional rule.

(a) Any person who:

(1) On April 1, 2009, is engaged in business as a manufacturer of processed tobacco; and

(2) On or before June 30, 2009, submits an application for a permit or authorization as provided in this part to engage in such business, may continue to engage in that business pending final action on the application.

(b) Pending final action on an application or request for authorization submitted under paragraph (a) of this section, all provisions of chapter 52 of the Internal Revenue Code of 1986 shall

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apply to the applicant in the same manner and to the same extent as if the applicant were a holder of a permit to manufacture processed tobacco under chapter 52.

(c) Upon receipt of an application, the appropriate TTB officer will provide the applicant with a written acknowledgement that may be used for a limited period as confirmation of TTB authorization to engage in the business of a manufacturer of processed tobacco.

[T.D. TTB-78, 74 FR 29410, June 22, 2009, as amended by T.D. TTB-80, 74 FR 37552, July 29, 2009]

§ 40.494 Corporate documents.

Every corporation that files an application for a permit as a manufacturer of processed tobacco must furnish with its application for the permit required by § 40.492 a true copy of the corporate charter or a certificate of corporate existence or incorporation executed by the appropriate officer of the State in which incorporated. The corporation must likewise furnish duly authenticated extracts of the stockholders' meetings, bylaws, or directors' meetings, listing the offices the incumbents of which are authorized to sign documents or otherwise act in behalf of the corporation in matters relating to 26 U.S.C. chapter 52, and regulations issued thereunder. The corporation must also furnish evidence, in duplicate, of the identity of the officers and directors and each person who holds more than ten percent of the stock of such corporation. Where any of the information required by this section has previously been filed with the appropriate TTB officer and such information is currently complete and accurate, a written statement to that effect, in duplicate, will be sufficient for the purpose of this section.

§ 40.495 Articles of partnership or association.

Every partnership or association that files an application for a permit as a manufacturer of processed tobacco must furnish with its application for the permit required by § 40.492 a true copy of the articles of partnership or association, if any, or certificate of partnership or association where required to be filed by any State, county,

or municipality. Where a partnership or association has previously filed such documents with the appropriate TTB officer and such documents are currently complete and accurate, a written statement, in duplicate, to that effect by the partnership or association will be sufficient for the purpose of this section.

§ 40.496 Trade name certificate.

Every person that files an application for a permit as a manufacturer of processed tobacco operating under a trade name must furnish with the application for the permit required by § 40.492 a true copy of the certificate or other document, if any, issued by a State, county, or municipal authority in connection with the transaction of business under such trade name. If no such certificate or other document is so required, a written statement, in duplicate, to that effect by such person will be sufficient for the purpose of this section.

[T.D. TTB-78, 74 FR 29410, June 22, 2009, as amended by T.D. TTB-80, 74 FR 37552, July 29, 2009]

§ 40.497 Additional information.

The appropriate TTB officer may require such additional information as deemed necessary to determine whether the applicant is entitled to a permit under this subpart. The applicant shall, when required by the appropriate TTB officer, furnish as a part of the application for the permit such additional information as may be necessary for the appropriate TTB officer to determine whether the applicant is entitled to a permit.

§ 40.498 Investigation of applicant.

Appropriate TTB officers may inquire or investigate to verify the information in connection with an application for a permit. The investigation will ascertain whether the applicant is eligible for a permit. A permit may be denied if the applicant (including, in the case of a corporation, any officer, director, or principal stockholder and, in the case of a partnership, a partner)—

(a) Is, by reason of his business experience, financial standing, or trade connections or by reason of previous or

current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with this chapter;

(b) Has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes; or

(c) Has failed to disclose any material information required or made any material false statement in the application therefor.

§ 40.499 Notice of contemplated disapproval.

If the appropriate TTB officer has reason to believe that the applicant is not entitled to a permit, the appropriate TTB officer will promptly give to the applicant notice of the contemplated disapproval of the application and opportunity for hearing thereon in accordance with part 71 of this chapter. If, after such notice and opportunity for hearing, the appropriate TTB officer finds that the applicant is not entitled to a permit, an order will be prepared stating the findings on which the permit request is denied.

§ 40.500 Issuance of permit.

If the application for permit, together with the supporting documents, required under this part is approved, the appropriate TTB officer will issue a permit on TTB F 5200.28 to the applicant as a manufacturer of processed tobacco.

§ 40.501 Retention of permit and supporting documents.

The manufacturer must retain the permit, together with the copy of the application and supporting documents returned with the permit, at the same place where the records required by this subpart are kept. The permit and supporting documents must be made available for inspection by any appropriate TTB officer upon request.